

DOCKET FILE COPY ORIGINAL

United States Senate

WASHINGTON, DC 20510

EX PARTE OR LATE FILED August 24, 1994

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

We are aware of the letter sent to you on June 15, 1994 by several Members of Congress, addressing Section 19, the program access provision, of the Cable Act of 1992. We believe that letter fundamentally misstates the goal of Section 19, which was intended only to address exclusive practices by cable operators. Non-cable operations, such as direct broadcast satellite (DBS) are not covered by Section 19.

As the title of the Cable Act clearly indicates, the legislation specifically was designed to address the problems suffered by the public as a result of cable's monopolistic practices. Many of our constituents complained about cable operator's abuses of their power.

A key provision of the Act is Section 19, which addresses cable programming practices. It precludes cable operators from entering into exclusive contracts with vertically integrated cable programmers in areas not served by cable. It permits exclusive contracts in areas served by cable, if the FCC determines that such contracts are in the public interest. We submit, however, that a search of the entire Cable Act and its legislative history will confirm that only program contracts involving cable operators were intended to fall within the province of Section 19 and the Act as a whole.

Moreover, a fundamental purpose intended to be served by Section 19 is the promotion of technologies that can compete with cable operations. In this regard, competitive exclusivity in DBS operations is essential if a non-cable operator with a small number of channels is to be able to compete with another operator offering more, but different channels. Denying competitive exclusivity could have the perverse effect of creating a monopoly within DBS by limiting an operator's ability to grow, compete with cable, and offer unique services to the customer.

No. of Copies rec'd _____
List A B C D E

94-48
CATV-92
265
BC
PV
1270

RECEIVED
OCT 19 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

2

We believe the Commission's initial conclusions on programming exclusivity -- that Section 19 applies only to cable operators -- were correct, and the rules adopted by the FCC thus properly implement Section 19. We understand the Attorneys General of 45 states and the District of Columbia, the U.S. Department of Justice, and Judge John Sprizzo, U.S. District Court, Southern District of New York, all agree that the Cable Act of 1992 does not prohibit exclusive contracts by DBS providers and programmers.

We have attached material which provides graphic illustration of the fact that the FCC's present rules will make extensive programming available to DBS customers.

We appreciate your consideration of our views.

Sincerely,



Bob Packwood
U.S. Senate



Dan Coats
U.S. Senate

DSS™

(Digital Satellite System)

DirecTv Programming

Basic Channels

A&E
Black Entertainment
Television
Cartoon Network
Country Music Television
CNN
CNN International
CNBC
Court TV
C-Span
C-Span 2
Discovery
E!
ESPN
Family Channel
Headline News
The Learning Channel
Much Music
SCI-Fi Channel
Shopping
Travel Channel
The Weather Channel
TBS-Superstation
The Nashville Network
Turner Classic Movies
TNT
USA Network

Premium Channels

The Disney Channel East/West
Encore
Encore 2/Love Stories
Encore 3/Western
Encore 4/Tweens
Encore 5/Mystery
Encore 6/Action
Encore 7/True Stories & Drama
Playboy Channel

Pay-Per-View Movies

*Approximately 40+ Channels
with current hit films from:*
Paramount Pictures
Columbia Pictures
Sony Pictures Classics
TriStar Pictures
Turner MGM Film Library
Universal Pictures
Touchstone Pictures
Hollywood Pictures
Walt Disney Pictures
Warner Bros
Miramax Films

Pay-Per-View Sports

Up to 40 channels with
events expected from all
major sports leagues

Special Interest

Golf Channel
CBC Newsworld International
Physicians Television Network
Bloomberg Direct Financial
Music Choice (Digital Audio)
TRIO
Movie Preview Channel
Sports Preview Channel
Consumer Information

***List includes all DirecTv programming announced as of June 28, 1994**

DSSTM

(Digital Satellite System)

USSB Programming

Basic Channels (6)

Lifetime
Nickelodeon/Nick at Nite
MTV
VH-1
Comedy Central
All News Channel

Premium Channels (14)

HBO East/West
HBO 2 East/West
HBO 3
Showtime East/West
Showtime 2
The Movie Channel East/West
Cinemax East/West
Cinemax 2
FLIX

***Includes all channels with which USSB will start. Expected future compression improvements should allow for additional channels/services. Current plans include public service, free advertiser supported services and special interest programming**

Congress of the United States
House of Representatives
Washington, DC 20515

CA TV-92
dbs
PV
BC
4271

August 24, 1994

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

We are aware of the letter sent to you on June 15, 1994 by several Members of Congress, addressing Section 19, the program access provision, of the Cable Act of 1992. We believe that letter fundamentally misstates the goal of Section 19, which was intended only to address exclusive practices by cable operators. Non-cable operations, such as direct broadcast satellite (DBS) are not covered by Section 19.

As the title of the Cable Act clearly indicates, the legislation specifically was designed to address the problems suffered by the public as a result of cable's monopolistic practices. Many of our constituents complained about cable operator's abuses of their power.

A key provision of the Act is Section 19, which addresses cable programming practices. It precludes cable operators from entering into exclusive contracts with vertically integrated cable programmers in areas not served by cable, if the FCC determines that such contracts are in the public interest. We submit, however, that a search of the entire Cable Act and its legislative history will confirm that only program contracts involving cable operators were intended to fall within the province of Section 19 and the Act as a whole.


Moreover, a fundamental purpose intended to be served by Section 19 is the promotion of technologies that can compete with cable operations. In this regard, competitive exclusivity in DBS operations is essential if a non-cable operator with a small number of channels is to be able to compete with another operator offering more, but different channels. Denying competitive exclusivity could have the perverse effect of creating a monopoly within DBS by limiting an operator's ability to grow, compete with cable, and offer unique services to the customer.


We believe the Commission's initial conclusions on programming exclusivity -- that Section 19 applies only to cable operators -- were correct, and the rules adopted by the FCC thus properly implement Section 19. We understand the Attorneys General of 45 states and the District of Columbia, the U.S. Department of Justice, and Judge John Sprizzo, U.S. District Court, Southern District of New York, all agree that the Cable Act of 1992 does not prohibit exclusive contracts by DBS providers and programmers.


We have attached material which provides graphic illustration of the fact that the FCC's present rules will make extensive programming available to DBS customers.


We appreciate your consideration of our views.


Sincerely,



Harris W. Fawell
Member of Congress



Philip M. Crane
Member of Congress

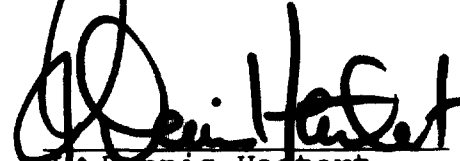

Steven H. Schiff
Member of Congress


Carlos J. Moorhead
Member of Congress


Scott L. Klug
Member of Congress


Cardiss Collins
Member of Congress


Jack Fields
Member of Congress


J. Dennis Hastert
Member of Congress

DSS™

(Digital Satellite System)

DirecTv Programming

Basic Channels

A&E
Black Entertainment
Television
Cartoon Network
Country Music Television
CNN
CNN International
CNBC
Court TV
C-Span
C-Span 2
Discovery
E!
ESPN
Family Channel
Headline News
The Learning Channel
Much Music
SCI-Fi Channel
Shopping
Travel Channel
The Weather Channel
TBS-Superstation
The Nashville Network
Turner Classic Movies
TNT
USA Network

Premium Channels

The Disney Channel East/West
Encore
Encore 2/Love Stories
Encore 3/Western
Encore 4/Tweens
Encore 5/Mystery
Encore 6/Action
Encore 7/True Stories & Drama
Playboy Channel

Pay-Per-View Movies

*Approximately 40+ Channels
with current hit films from:*
Paramount Pictures
Columbia Pictures
Sony Pictures Classics
TriStar Pictures
Turner MGM Film Library
Universal Pictures
Touchstone Pictures
Hollywood Pictures
Walt Disney Pictures
Warner Bros
Miramax Films

Pay-Per-View Sports

Up to 40 channels with
events expected from all
major sports leagues

Special Interest

Golf Channel
CBC Newsworld International
Physicians Television Network
Bloomberg Direct Financial
Music Choice (Digital Audio)
TRIO
Movie Preview Channel
Sports Preview Channel
Consumer Information

***List includes all DirecTv programming announced as of June 28, 1994**

DSSTM

(Digital Satellite System)

USSB Programming

Basic Channels (6)

Lifetime
Nickelodeon/Nick at Nite
MTV
VH-1
Comedy Central
All News Channel

Premium Channels (14)

HBO East/West
HBO 2 East/West
HBO 3
Showtime East/West
Showtime 2
The Movie Channel East/West
Cinemax East/West
Cinemax 2
FLIX

***Includes all channels with which USSB will start. Expected future compression improvements should allow for additional channels/services. Current plans include public service, free advertiser supported services and special interest programming**

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

OCT 13 1994

IN REPLY REFER TO:
CN 9404270

The Honorable Dan Coats
United States Senate
404 Russell Senate Office Building
Washington, DC 20510-1403

Dear Senator Coats:

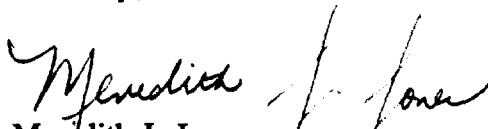
The Chairman has asked me to respond to your letter concerning the Federal Communications Commission's *First Report and Order* implementing Section 19 of the Cable Television Consumer Protection and Competition Act of 1992.

Specifically, your letter requests that the Commission reaffirm its finding in the *First Report and Order* that Section 19 prohibits only exclusive contracts between vertically integrated cable programmers and cable operators in areas unserved by cable operators, and does not cover exclusive contracts with DBS providers. You state further that denying competitive exclusivity could create a monopoly within DBS by limiting a DBS operator's ability to grow, compete with cable, and offer unique services to the consumer.

The issues you have raised are those raised by parties to the reconsideration of the Commission's program access rulemaking proceeding, which is currently pending. As such, any discussion by Commission personnel concerning these issues outside the context of the rulemaking would be inappropriate. However, you may be assured that the Commission will take into account each of the arguments raised by you and your colleagues concerning these issues to arrive at a reasoned decision on reconsideration.

I trust this information is responsive to your inquiry.

Sincerely,


Meredith J. Jones
Chief, Cable Services Bureau

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

October 13, 1994

IN REPLY REFER TO:
CN 9404270

The Honorable Bob Packwood
United States Senate
259 Russell Senate Office Building
Washington, DC 20510-3702

Dear Senator Packwood:

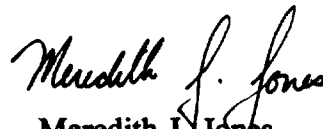
The Chairman has asked me to respond to your letter concerning the Federal Communications Commission's *First Report and Order* implementing Section 19 of the Cable Television Consumer Protection and Competition Act of 1992.

Specifically, your letter requests that the Commission reaffirm its finding in the *First Report and Order* that Section 19 prohibits only exclusive contracts between vertically integrated cable programmers and cable operators in areas unserved by cable operators, and does not cover exclusive contracts with DBS providers. You state further that denying competitive exclusivity could create a monopoly within the DBS market by limiting a DBS operator's ability to grow, compete with cable, and offer unique services to the consumer.

The issues you have raised are those raised by parties to the reconsideration of the Commission's program access rulemaking proceeding, which is currently pending. As such, any discussion by Commission personnel concerning these issues outside the context of the rulemaking would be inappropriate. However, you may be assured that the Commission will take into account each of the arguments raised by you and your colleagues concerning these issues to arrive at a reasoned decision on reconsideration.

I trust this information is responsive to your inquiry.

Sincerely,



Meredith J. Jones
Chief, Cable Services Bureau